

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPEAL NO. 38 OF 2005

Manisha w/o Nitin Ekbote,
Age; 34 years, Occ; L.I.C.,
S.S.A. Agent,
R/o; C/o; B.S. Deshmukh,
N-2, Mayanagar, CIDCO,
Aurangabad.

...APPELLANT
(Original Claimant)

VERSUS

1. National Insurance Company Ltd.
Hazari Chember, Station Road,
Aurangabad.

2. Satish Navtandas Nathani,
Age; Major, Occ; Business
and owner of the Car,
R/o; A/p, 137, Shindhi Colony,
Aurangabad.

3. Rajendra Ambadas Magar,
Age; Major, Occ; Driver,
R/o; Babhalashowar,
Tq. Shrirampur, Dist; Ahmednagar,
Now Residing at Vishnunagar,
Aurangabad.

...RESPONDENTS
(Original Respondents)

.....

Shri. P.C. Mayure, Advocate for Appellant.
Shri. R.C. Bora h/f Mr. P.P. Bafna Advocate
for Respondents.

.....

CORAM : SUNIL K. KOTWAL, J.

Date of Judgment: 29/04/2019

ORAL JUDGMENT :

This appeal is directed by the Original Claimant in Motor Accident Claim Petition No. 702 of 2002 (hereinafter referred to as "MACP") against the judgment and award passed by Motor Accident Claims Tribunal, Aurangabad, (hereinafter referred to as "Tribunal") whereby total compensation of Rs. 17,586/- was awarded by the Tribunal. Respondent no. 1 is the Insurer of the offending vehicle. Respondent no. 2 is the owner and respondent no. 3 is the driver of the offending car No. MH-326.

2. Facts leading to institution of this appeal are that on 5.11.2000, at about 5.30 p.m., in Aurangabad city, near Reliable Transport at Jafer Gate road, when the claimant was proceeding by her Luna No. MH-20-R-498, that time offending vehicle came from opposite direction and gave dash to Luna of the claimant, due to the rash and negligent driving of the offending vehicle by respondent No.2. In that accident, claimant sustained fracture injuries on her waist bone. The claimant was admitted in the hospital at Dr. Sachin Saoji as Indoor Patient for 2 to 4 days.

According to claimant, due to accidental injuries she sustained permanent disability and financial loss is caused in the work of LIC and as Postal Saving Agent. Under different heads she claimed compensation of rs. 2,00,000/-.

3. The petition was opposed by respondent No.1 by filing Written Statement as contributory negligence on the part of claimant.

4. Respondent nos. 2 and 3 proceeded Ex-parte as they remained absent, despite service of summons.

5. On behalf of claimant, she herself has entered into the witness box and filed documents in support of her contention. The Tribunal has awarded compensation of Rs. 17,586/- inclusive of 'No Fault Liability' compensation received by the claimant.

6. Heard Shri P.C. Maurye, learned counsel for appellant and Shri R.C. Bora h/f Mr. P.P. Bafna, learned counsel for respondent No. 1.

7. Learned counsel for appellant submits that the Tribunal did not award compensation under different heads, as laid down by the Apex Court in "**Rajkumar vs Ajaykumar and another**" [2011 (2) **Mh.L.J. 569**].

8. The next contention of the learned counsel for appellant is that she was bedridden for the period of four months from the date of accident on account of accidental injuries and compensation is awarded by the Tribunal for that period.

9. He submits that even under the head of Pains and Sufferings and the permanent disability, as well as medical expenses, very meager compensation was awarded by the Tribunal. He prays for enhancement of compensation relying on the judgment of this Court in "**Amit Suresh Chavan V. Pandurang Laxman Salunke and Anr.** delivered by this Court on 3rd April, 2019, in First Appeal No. 1883 of 2014".

10. In reply, learned counsel for insurer of the offending vehicle also placed reliance on the verdict of the Apex Court in "**Rajkumar vs. Ajaykumar and another**"[Supra], and submitted that unless the Doctor who treated the claimant is examined and unless the Medical Officer has issued permanent disability Certificate, the claimant cannot prove his contention of permanent disability.

11. His contention is that even no evidence has been brought on record by the claimant to prove her income as L.I.C. agent and Small Saving agent. He has pointed out that even the copies of Income Tax Return filed by the claimant do not support the contention of the claimant, regarding monthly income @ 10,000/- p.m. The contention of the learned counsel for insurer is that the award passed by the Tribunal is just and reasonable and needs no interference.

12. I have gone through the judgment and award passed by the Tribunal and the evidence placed on record by the claimant.

13. In the case of personal injury matters, there is a landmark judgment in the case of "**Raj Kumar Vs. Ajay Kumar and another**" [2011 (2) **Mh.L.J. 569**], where the Apex Court held that in personal injury cases compensation is to be awarded under the following heads :-

Pecuniary damages (Special Damages) :-

- (I) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General Damages) :-

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

14. In the same case the Apex Court laid down the guideline that in routine personal cases,

compensation will be awarded under head of expenses regarding treatment, hospitalization, medicines, transportation, nourishing food, loss of earning during the period of treatment and the damages for pains, suffering and trauma. Only in serious cases of injury, where there is specific medical evidence, corroborating the evidence of claimant, that compensation will be granted under the heads of loss of future earning on account of permanent disability, future medical expenses, loss of amenities and loss of expectation of life. The apex Court also held that in personal injury cases the Tribunal has to assess effect of permanent disability of earning capacity of the injured and after assessing the loss of earning capacity in terms of percentage of income, it has to be quantified in terms of money, to arrive at the future loss of earning. The tribunal has to consider whether the disablement is permanent total disablement or permanent partial disablement and if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of limb on the functioning of the entire body, that is the

permanent disability suffered by the person. The tribunal has to consider the avocation, profession and nature of the work of claimant before the accident and also his age. It has to ascertain as to what activities claimant could carry on inspite of permanent disability and what he could not do as a result of permanent disability. The Tribunal has to consider whether the claimant was prevented or restricted from discharging his previous activities and functions. Regarding medical evidence the Apex Court has opined that the Tribunal should act with caution, if it is proposed to accept the expert evidence of doctor, who did not treat the injured but who give disability certificate, without proper medical assessment. Where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding genuineness of such certificate. Mere production of disability certificate or discharge certificate will not be proof of extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed extent of disability of claimant is tendered for cross-

examination with reference to the certificate. The percentage of permanent disability cannot be assumed to be the percentage of loss of earning capacity.

15. In view of this clear position, merely by filing the Discharge Card (Exh. 40) and Permanent Disability Certificate (Exh. 42) issued by the Civil Surgeon, Aurangabad, are of no help to the claimant to prove that due to accidental injuries she sustained 100% permanent disability. So also the claimant Manisha (PW 1), has admitted in her cross-examination that during the period of her medical treatment for four months, her husband used to look after her work as L.I.C. agent and her Postal work. From her further cross-examination, it becomes clear that due to accidental injuries sustained in the above said accident, the earning capacity of the claimant is not at all adversely affected. Therefore, as ruled by the Apex Court in "**Rajkumar v. Ajaykumar and another**" [supra], no compensation can be awarded to the claimant under the head of 'loss of future prospect' and loss of earnings during the period

of hospitalization or under the head of loss of amenities, pains, sufferings and Trauma.

16. No doubt, in "**Rajkumar v. Ajaykumar and another**"[supra], the Apex Court has specified different heads for awarding the compensation under pecuniary and non pecuniary liability heads. No doubt, the Tribunal has not awarded compensation under different heads as specified by the Apex Court in "**Rajkumar v. Ajaykumar and another**"[supra]. However, as except the claimant no other witness has been examined by the claimant to substantiate her contention, the compensation awarded by the Tribunal cannot be enhanced as contended by the claimant.

17. Before parting with the judgment, I must make it clear that the ratio in "**Amit Suresh Chavan V. Pandurang Laxman Salunke and Anr.**" [supra], is distinguishable on facts because, in that case, the concerned Medical Officer was examined by the claimant to prove permanent disability and loss of earning capacity.

18. Accordingly, I hold that this appeal being devoid of merit, deserves to be dismissed. Accordingly First Appeal No. 38 of 2005 is dismissed.

19. Parties to bear their respective costs.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/